



THE GLOBE AND MAIL

October 5, 2010

Sowing seeds of discontent

By JEFF GRAY

From Wednesday's Globe and Mail

DuPont casts itself as unlikely David in legal battle with Monsanto's Goliath in genetically modified crops

It is one of the biggest chemical companies in the world, with a market capitalization of more than \$40-billion (U.S.). For this reason alone, DuPont DD-N - the company behind the nylon in your stockings and the Teflon in your frying pan - is an unlikely champion of the American farmer.

This hasn't stopped DuPont from casting itself in this role as it takes on another giant corporation many love to hate: genetically-modified-crop giant Monsanto MON-N

The two companies are fighting in U.S. District Court in St. Louis over Monsanto's patented genetic "traits," which are embedded in almost all of the soybean and corn seeds planted across the U.S. and Canada.

The battle, in which DuPont - also in the business of developing genetic traits - accuses Monsanto of abusing its monopoly power to hike prices and retain a stranglehold on the market, is not just about the fate of the humble American farmer.

Besides the millions of dollars in revenue at stake for the two companies, the case could have an impact on food prices - and the future shape of a biotech industry expected to boom as geneticists develop supercharged crops meant to feed the world's growing population.

"We didn't take this on lightly. We did a lot of work. We engaged economists and antitrust experts," said Tom Sager, DuPont's senior vice-president and general counsel, in an interview with The Globe and Mail in Toronto.

"No one else was in a position to take them on. The farmers certainly couldn't. They tried. The seed companies couldn't. ... So we were the only company of any size or import that could push back and say, 'No more.'"

DuPont, based in Wilmington, Del., maintains that the fight is more than just a wrestling match between two giant corporations for market share. Mr. Sager argues that Monsanto's efforts to dominate the market are

stifling competition and holding back the innovations in biotechnology that will allow farmers to increase crop yields and feed the world's hungry as its population continues to grow.

The origins of the dispute date back years. In the 1970s, St. Louis, Mo.-based Monsanto developed a pesticide called glyphosate, which it marketed under the brand name Roundup. The trouble with the chemical, however, was that it not only killed weeds, it could also kill crops. In the 1990s, Monsanto developed a genetic trait - which it called Roundup Ready - that could be inserted into seeds to make the resulting crops immune to Roundup. This was extremely popular with farmers.

According to DuPont, more than 90 per cent of all the soybeans planted in the United States now contain Roundup Ready, which Monsanto licenses to independent seed companies that produce seeds for farmers. Among the companies using Monsanto's traits was DuPont subsidiary Pioneer Hi-Bred International Inc., a seed producer that is also in the business of developing its own genetic traits for seeds.

It was Monsanto that fired the first shot in this legal fight, suing DuPont in May of 2009 for allegedly violating the terms of its licence agreement with Monsanto by combining, or "stacking," Roundup Ready with DuPont's own pesticide-resistance genetic trait, with which it intended to compete with Monsanto before the two companies clashed in court.

DuPont said its trait would increase yields and make crops resistant to pesticides other than glyphosate - a big concern as the widespread use of the pesticide has resulted in an explosion of new, glyphosate-resistant weeds. And the company said a \$30-million-a-year licensing deal with Monsanto gave it the right to stack the two traits in soybean and corn seeds. So it fired back with a countersuit.

DuPont accuses Monsanto of using its leverage to force seed companies into contracts that prohibit them from stacking non-Monsanto traits, strangling competition and innovation. DuPont also says Monsanto is forcing seed companies to switch now to its new soybean trait, Roundup Ready 2 Yield, to extend its monopoly after its U.S. patent on Roundup Ready expires in 2014. The countersuit also accuses Monsanto of using "fraud" to obtain its original patent.

The allegations have coincided with a vow from the Obama administration to crack down on unfair business practices in agriculture. Monsanto has acknowledged that it is co-operating with a civil antitrust investigation by the U.S. Department of Justice. State attorneys-general are also looking into the company's practices.

Monsanto denies the allegations and insists that seed companies and farmers have ample choice to ensure competition. It points to DuPont's funding of anti-Monsanto farm groups and associations as evidence the company is running a "smear campaign."

The U.S. litigation has not extended into Canada. Monsanto Canada spokeswoman Trish Jordan said in an interview that Monsanto has already rolled out Roundup Ready 2 Yield in soybeans in Canada, where its original Roundup Ready patent expires in August, 2011. She said the company is unaware of any comparable antitrust investigation north of the border.

Even though a trial date has been set for October of 2011, the battle between the two companies could come to a head sooner, Mr. Sager said, in the form of a settlement - especially if the U.S. Justice Department decides to proceed with an antitrust case against Monsanto.

New York antitrust lawyer John Harkrider, who is not involved in the case, said the fight over Monsanto's alleged monopoly abuse could be the beginning of a series of fights over biotech traits that mirrors the brand-name-v.-generics battles in pharmaceuticals.

"I'm sure DuPont would love to be in Monsanto's position," said Mr. Harkrider, of Axinn Veltrop & Harkrider LLP. "And Monsanto's response is, 'Well, if you had come up with a great product and had been innovative, the market would have rewarded you. But instead ... you want a free ride off of ours.'"

BY THE NUMBERS

99.7%

Monsanto's share of soybeans planted in U.S. with herbicide-resistant genetic traits, according to DuPont.

80.8%

Monsanto's share of corn planted in U.S. with herbicide-resistant genetic traits, according to DuPont.

2,126

Number of soybean seeds U.S. farmers have to choose from, according to Monsanto.

4,381

Number of corn varieties U.S. farmers have to choose from, according to Monsanto.

\$41.4-billion

DuPont's market capitalization, in U.S. dollars

\$25.9-billion

Monsanto's market capitalization

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